

UNITED STATES OF AMERICA
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF ADMINISTRATIVE LAW JUDGES

In the Matter of:

GRAHAM S. PILLSBURY,

Respondent.

HUDALJ 00-9236-DB(LDP)

Decided: June 12, 2000

Graham S. Pillsbury, *pro se*

Lawrence E. McDermott, Esq.
for the Government

Before: Alan W. Heifetz
Chief Administrative Law Judge

RECOMMENDED DECISION

This matter arises out of a March 14, 2000, notice to Respondent, Graham S. Pillsbury, that the United States Department of Housing and Urban Development was issuing a Limited Denial of Participation ("LDP"), pursuant to 24 C.F.R. Part 24, Subpart G, restricting his participation in HUD programs. The basis for the LDP was unacceptable performance in the conduct of seven appraisals on properties that were insured under the Section 203(b) One-To-Four-Family Home Mortgage Insurance Program ("Section 203(b) Program"). After an informal telephone conference that was requested by Mr. Pillsbury, on April 24, 2000, Brenda M. Laroche, the Deputy Director of the Homeownership Center, Philadelphia, affirmed the 12-month LDP. Mr. Pillsbury appealed that decision, and as a result, a formal hearing was held in Portland, Maine, on June 6, 2000.

Findings of Fact

1. At the request of HUD, seven field reviews of appraisals performed by Respondent were completed by an independent contractor on the following properties that

were to serve as securities for mortgages issued under the Section 203(b) Program:

- a. 14 Wilson Street, Topsham, Maine
- b. 440 St. John Street, Portland, Maine
- c. 53 Myrtle Street, Westbrook, Maine
- d. Unit #23, 311 Seaside Avenue, Saco, Maine
- e. 6 Ridgeview Drive, Biddeford, Maine
- f. 5 Therrian Avenue, Saco, Maine
- g. 29 Wellstone Drive, Portland, Maine

2. The field reviews concluded that the appraisals performed by Respondent on the seven properties listed above were unacceptable because they did not comply with HUD guidelines.

3. Termite certificates are required for all properties in Cumberland and York Counties -- counties in which Portland, Westbrook, Saco, and Biddeford are located. Accordingly, appraisals on properties in those counties must note in Valuation Condition ("VC") 11-A on the National Valuation Condition Sheet ("VC Sheet") (a required submission with an FHA-insured appraisal) that a recognized termite control operator must furnish a certificate that there is no evidence of active termite infestation or unrepaired termite damage at the property to be insured. There was no notation of any type on VC 11-A for the five properties located on St. John Street and Wellstone Drive in Portland, on Myrtle Street in Westbrook, on Ridgeview Drive in Biddeford, or on Therrian Avenue in Saco.

4. In the appraisal for 14 Wilson Street, Topsham, Respondent failed to annotate VC-7 to describe flaking and peeling paint around the side entrance and basement windows of the property or to make any other notation to require the correction of defective paint on the property. In addition, Respondent made a positive adjustment in the amount of \$4,000 for the presence of a fireplace at the subject property. There were no fireplaces in the three comparable sale properties, nor was there any discussion in the appraisal of the contribution to value of fireplaces in the local market.

5. In the appraisal for 440 St. John Street, Portland, Respondent provided no explanation of the "inferior" conditions at the three comparables that prompted him to make positive adjustments in the amounts of \$7,500, \$5,000, and \$7,500. Respondent also made a \$10,000 positive adjustment to Comparable #1 for an inferior view. The sales price for Comparable #1 was \$82,000. Total positive adjustments for Comparable #1 were 44.2 percent of the sales price, bringing the adjusted sales price of Comparable #1 to \$118,280. The sales price for the subject property was \$117,500.

6. In the appraisal for 53 Myrtle Street, Westbrook, Respondent provided no explanation of the "superior" conditions at the three comparables that prompted him to

make negative adjustments in the amounts of \$7,500, \$5,000, and \$7,500. The narrative section of the appraisal, entitled Comments on Sales Comparison, did not match the subject appraisal; those comments appeared to relate to an entirely different appraisal. The three comparable sales were all two-story, hip-roofed colonials, whereas the subject property was one and one-half story bungalow.

7. In the appraisal for Unit #23, 311 Seaside Avenue, Saco, the photograph purporting to portray the front of the house is of a different property than the subject property which is shown on other photographs in the appraisal. VC-9 fails to note that the subject property is within a condominium or planned unit development. Comparable #1 was sold 13 months before the appraisal of the subject property.

8. In the appraisal for 29 Wellstone Drive, Portland, the photograph of the subject property shows an end unit, while page two of the Appraisal Report describes the property as an inside unit. Comparable #2 was given a positive adjustment of \$1,500 because it is an end unit; however, in Respondent's December 30, 1999, appeal letter, he notes that the subject unit is an end unit and that "therefore the photos are correct." The appraisal contains no evidence or discussion of market data that would support an adjustment of \$2,500 for a view of the woods, that average prices of the comparables were increasing at a rate of six percent per year since January 1, 1999, or that a typical buyer would likely pay \$1,500 for a second Rinnai heater in the basement or for a whirlpool tub. The initial narrative sales comparison analysis does not match the subject property or the listed comparables; rather it appears to refer to another appraisal.

9. Respondent was previously a member of the Fee Panel of Appraisers, and as such a member, he received training on FHA's standards and criteria for performing FHA appraisals and fee assignments in accordance with HUD Handbooks 4150.1, REV 1, and 4905.1, REV 1.

10. HUD Handbook 4150.1, REV 1, Valuation Analysis for Home Mortgage Insurance, dated February 1990, outlines the procedures to be followed when completing an FHA-insured appraisal, and knowledge of that Handbook is a requirement for placement on the Lender Selection Roster of Appraisers, of which Respondent is a member.

Discussion

In performing an FHA-insured appraisal, an appraiser is required by HUD Handbooks to identify any visible deficiencies impairing the safety, sanitation, structural soundness, and continued marketability of the property, and to determine that the property complies with FHA minimum property standards. Errors and/or omissions which lead to

value determinations which are an unacceptable underwriting risk to HUD qualify for poor ratings ("2" or "1") on Field Reviews. After three "2" or "1" ratings, the Chief Appraiser must remove an appraiser from the Lender Selection Roster of Appraisers by initiating an LDP or other action, unless the appraiser is closely monitored for 30 days. In this case, reviews of Respondent's appraisals resulted in six "1" ratings (the lowest rating) and one "2" rating (the next lowest rating on a 5 to 1 scale), and the consequent decision to initiate the LDP.

Five of the reviewed appraisals were rated "1", at least in part, because a termite certification was not required for the subject property, and the applicable valuation condition was not marked on the VC Sheet. The applicable HUD Handbook requires the appraiser to inspect the subject site to assure that there is no wood-boring insect infestation or potential for such infestation, and the appraiser must require an inspection and certification by a reputable, licensed termite company. The absence of such certification creates a major repair condition. The Handbook notes that termite damage can seriously affect the structural integrity of the property and can render its marketability questionable. Accordingly, neglecting to require a termite certification constitutes unacceptable performance in the Appraisal Evaluation Matrix of the Handbook.

Respondent defends his failure to require a termite certification by alleging that an underwriter for Norwest Mortgage "instructed me not to check it off and that they would deal with it in there [sic] review/underwriting of the loan." That explanation is uncorroborated, unpersuasive, and not credible. There was no explanation of why the mortgage company would prefer to take care of such a matter later in the process, how it would take care of the matter, or whether it did in fact take care of the matter before any loan was insured by HUD. There was also no justification offered for why Respondent would rely on the representation of an unnamed underwriter which directly conflicts with a HUD Handbook requirement and a specific section of the VC Sheet.

Defective paint is also a major repair condition. In houses built before 1978, defective paint could be lead-based, and, if so, it would constitute a known health hazard, especially to children. Respondent suggested that because the appraisal reviewer took photographs of the property at 14 Wilson Street, Topsham, some four months after Respondent's appraisal, perhaps the home owner had chipped the paint to prepare the surface for repainting. The photographs belie that contention. They do not show a surface that has been chipped, scraped, or sanded. The photographs show surfaces with flaking, deteriorating paint, not surfaces that had been recently prepared for repainting.

The only evidence in the record supporting Respondent's \$4,000 adjustment for a fireplace at 14 Wilson Street is his uncorroborated opinion. Respondent believes that anything between \$2,500 and \$6,000 is reasonable; the review appraiser and Gerard Glavey, Chief of HUD's Technical Branch, believe that a fireplace in the subject home

contributes no more than \$1,500 to the value of the property. Based on her education, experience, and academic affiliation, I credit the testimony of Faye Johnson, the review appraiser, and find that the \$4,000 adjustment is unsubstantiated and excessive.

The adjustments for 440 St. John Street are also unsubstantiated and excessive, especially the \$10,000 adjustment for view. Total adjustments amount to 44.2 percent of the adjusted sales price of Comparable #1; the adjustment for the view amounts to more than 12 percent of the \$82,000 actual sales price of Comparable #1. In his letter of appeal, Respondent notes, referring to Comparable #1, "Although the adjustments on this sale are excessive and/or high, it is considered a very good indicator of value due to its very similar location, style, traffic influences and overall market appeal." Although Respondent opined that because the nearby highway curved, the subject property viewed the highway whereas Comparable #1 could not see the highway, I do not find that testimony persuasive. The subject property is the fourth house on one side of the highway; Comparable #1 is the second house from the highway on the other side. There is no evidence that the subject house has a clear view of the highway from the front, the back, or the side. Photographs show that on at least two sides, there are buildings that might block any view. Moreover, there is no evidence of what Comparable #1 views or whether the views from either property confer an aesthetic value to the properties.

The appraisal notes that the property at 53 Myrtle Street was in "fair" condition. However, because the narrative portion of the appraisal belongs to an entirely different appraisal, there is no explanation of its "fair" condition, or what may need to be done to the property to justify HUD insurance on the property. There is also no explanation for the adjustments to the comparables for their "superior" condition, or to explain how they differ among themselves. Without that explanation, the appraisal is vulnerable to attack for "backing in" figures to get the adjusted sales prices of the comparables to match the sales price of the subject property. While the comparison of the subject bungalow with two-story, hip-roof colonials might be appropriate on the basis of gross living area, I am not persuaded by Respondent's uncorroborated claim that potential buyers are more interested in square footage than style, and that therefore, comparables of different styles are appropriate. The review appraiser noted that comparables of the same style were available and were, therefore, more appropriate.

While the mixup of photographs in the appraisal of 311 Seaside Avenue, might be deemed a sloppy mistake, the failure to note that the property is within a condominium or planned unit development is much more serious. Because the marketability of a unit may depend on the percentage of units sold in the condominium or planned unit development, the relevant HUD Handbook and the VC Sheet require information to determine whether the project has been sufficiently sold out to qualify it for FHA's approval list or whether the unit is being sold subject to a spot loan. Respondent's reliance on the lender to submit

appropriate information does not relieve him of his responsibility to make appropriate notations in the appraisal.

The mismatched photographs and the inapposite narrative analysis of comparable sales in Respondent's appraisal of 29 Wellstone Drive are evidence of unacceptably sloppy practices. Combined with the absence of market data or other evidence justifying the adjustments made to the subject property, the poor rating for the appraisal was fully warranted.

The LDP was issued pursuant to 24 C.F.R. §§ 705(a)(2) and (a)(9) based on irregularities in Respondent's performance of seven appraisals and violations of procedures related to mortgage insurance to be issued on the properties. In order to sustain an LDP, the government must prove those bases merely by "adequate evidence." *See* 24 C.F.R. § 705(a). Based on the testimony and evidence of the review appraiser and the Chief of HUD's Technical Branch, I find that the government has met that burden of proof. Accordingly, I recommend that the Limited Denial of Participation be *affirmed*.

/s/

ALAN W. HEIFETZ
Chief Administrative Law Judge

